

7.1 ELECTIONS CODE SECTION 9212 REPORT REGARDING NORTHERN PLAIN INITIATIVE

Consideration of a Report Evaluating the Impacts of the Proposed Initiative Regarding the Northern Plain Planning Area, Determination Whether to Place the Initiative on the November, 2006 Ballot or Adopt the Initiative Ordinance, and Determination Whether to Participate in Written Arguments

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Executive Summary: At the June 27, 2006 City Council meeting, staff will present the results of a report analyzing the proposed initiative to limit development for an approximately 512-acre area of land in the Northern Plain Planning Area and request that the City Council decide whether to adopt the ordinance as proposed in the initiative, or to place the matter on the ballot for the November 7, 2006 general election. If the Council decides to place the measure on the ballot, this item also requests that the Council determine whether they wish to participate in the written arguments regarding the ballot measure.

The Council authorized staff to proceed with the analysis of the measure, pursuant to Elections Code Section 9212, on May 16, 2006 and confirmed this action on June 6, 2006 when the petition was certified. The presentation of the report analyzing the proposed initiative must occur within 30 days from the date the Elections Official certifies the sufficiency of the petition to the legislative body. The Elections Official (City Clerk) certified the sufficiency of the petition as required by the Elections Code and qualified it for the November 7, 2006 general election at the June 6, 2006, City Council meeting. Given the 4th of July holiday, the presentation of the report must occur at this meeting to meet the 30 day deadline.

BACKGROUND: The Patterson Ranch property comprises multiple parcels, including approximately 420 acres of land currently zoned Agriculture with a General Plan Designation of Open Space allowing very low density residential uses. The Cargill Salt property is a single 92 acre parcel with a zoning and General Plan designation of Restricted Industrial. These two sites collectively comprise the land area covered by the proposed initiative.

The owners of the Patterson Ranch property assembled a development team and began the process of investigating the development of their land into a mix of residential, open space, commercial and institutional uses in early 2005. Their development team hosted a series of public workshops to hear the community's interests and develop various land use plans for the Patterson Ranch portion of the area covered by the initiative. Staff understands that the most recent version of the conceptual development plan includes approximately 800 housing units, approximately 20,000 square feet of community serving retail, an elementary school, spiritual facility, community park with recreational fields and other natural open space areas.

On February 21, 2006, the City received a Notice of Intent to circulate a petition with a purpose of placing on the ballot an initiative regarding portions of land in the City's Northern Plain Planning Area.

The land associated with this petition includes what is commonly referred to as the Patterson Ranch and Cargill Salt properties. The intent of the initiative, as stated on the petition, is to limit development in this portion of Fremont to agriculture, outdoor recreation and very low density residential uses.

On May 5, 2006, the sponsors of the initiative submitted their signed petition to the City. The City contracted with the Alameda County Registrar of Voters to verify the sufficiency of the signatures contained on the petition. The total number of signatures required is 8,721, which represents 10% of the registered voters in the City of Fremont. The Registrar of Voters used a statistical random sampling process to verify that the petition qualified for the ballot with 137% of the valid signatures required. At its June 6, 2006, the City Council accepted the certificate of sufficiency for the initiative and confirmed their action of May 16, 2006, ordering a report on the effects of the proposed initiative, pursuant to Elections Code Section 9212.

DISCUSSION:

Elections Code Section 9212 Report Analyzing the Initiative

Elections Code Section 9212 provides that the City Council may request a report on the impacts the initiative may have on the City's General Plan and Zoning Ordinance; its effects on the use of land, housing, infrastructure, transportation, schools, parks, and open space; and, the fiscal and economic effects of the initiative. The section specifies that any or all of the following issues and items may be included:

- The fiscal impacts of the initiative;
- Its effect on the internal consistency of the City's General Plan, the consistency between the initiative's proposed General Plan designation and current zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code; (*Note: these Government Code Sections relate to 1) discriminatory actions, 2) the City's obligation to provide affordable housing, and 3) developers' rights to a density bonus.*)
- Its effects on the use of land for housing, the housing element, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs;
- Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space, including the potential for increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses;
- Its impact on the community's ability to attract and retain business and employment and any effect on existing business;
- Its impact on the uses of vacant parcels of land and designated industrial land;
- Its impact on agricultural lands, natural areas and public parks and open spaces; and
- Any other matters the legislative body requests to be in the report.

The City Council authorized staff to also include an environmental and legal analysis of the proposed initiative at the May 16 meeting. As set forth in Elections Code Section 9212, staff must present the report to the City Council no later than 30 days after the elections official has certified the sufficiency of the petition. This certification occurred on June 6, 2006. Due to the timing of the 4th of July holiday, staff must present this report at tonight's meeting.

Determination Whether to Place Initiative on the Ballot

After receiving and considering the report discussed above, the Council has two options as set forth in Elections Code Section 9215. When the report is presented to the legislative body (the Council), the body shall either (1) adopt the ordinance within 10 days, or (2) order an election and submit the ordinance, without alteration, to the voters at the next regular election. (Elections Code Sections 9215(b) and 1405.) The Council will be asked to make this determination at the conclusion of the discussion regarding the Elections Code Section 9212 report.

Determination Whether to Participate in Ballot Arguments

If the Council decides to place the initiative on the ballot, the Elections Code provides the opportunity for the submission of arguments both for and against the measure. Elections Code section 9219 provides that “persons filing an initiative petition...may file a written argument in favor of the ordinance, and the legislative body [the City Council] may submit an argument against the ordinance. Neither argument shall exceed 300 words in length...and both arguments shall be mailed to each voter with the sample ballot for the election.” (Elections Code Section 9219.)

The Elections Code also provides the opportunity for written arguments to be submitted by “any member or members of the legislative body authorized by that body, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations....” (Elections Code Section 9282.) No primary argument may exceed 300 words in length and must be accompanied by the printed name and signature, or printed names and signatures, of the author or authors submitting it. If the argument is submitted on behalf of an organization, it must include the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. No more than five (5) signatures shall appear with any argument. (Elections Code Section 9283.)

Rebuttal arguments may also be submitted in response to arguments either for or against the measure. When an argument in favor of an initiative is submitted to the City Clerk, she immediately will send a copy of that argument to the opponents of the measure. When an argument against the initiative is submitted to the City Clerk, she immediately will send a copy to the proponents of the measure. Rebuttal arguments may be submitted by the author or authors of a primary argument, or the author(s) may authorize any other person(s) to prepare, submit or sign the rebuttal argument. Rebuttal arguments are limited to 250 words in length. No more than five (5) signatures shall appear on any rebuttal argument. (Elections Code Section 9285.)

Generally the Elections Code provides that primary arguments are due fourteen (14) days from the date that the Council calls the election on the measure. However, this deadline does not apply in the case of a consolidated election, which is the type of election in Fremont this November 2006. Thus, the deadline for the primary arguments is subject to the discretion of the Elections Official/City Clerk. (Elections Code Section 9286.) The deadline for rebuttal arguments is set by state law and is no later than ten (10) days after the final filing date for the primary arguments. (Elections Code Section 9285.) Given the timing of the Council’s recess in August, the City Clerk proposes the following schedule for written arguments, should the Council decide the place the measure on the ballot:

1. **Primary** arguments due to the City Clerk no later than **5:00 p.m. on Tuesday July 18, 2006.** (21 days from the call of the election on the initiative measure.)
2. **Rebuttal** arguments due to the City Clerk no later than **5:00 p.m. on Friday July 28, 2006.** (10 days after primary arguments due.)

This schedule allows the Council to consider the contents of any primary argument at its last meeting on July 25th before the legislative recess and provide any direction with respect to a draft rebuttal argument, either with respect to content or signatures.

Should there be more than one argument submitted for or against any city measure, the Elections Official must select the arguments to be printed and published using the following order of preference:

1. The legislative body or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are bona fide sponsors or proponents of the measure.
3. Bona fide association of citizens.
4. Individual voters who are eligible to vote on the measure.

In sum, should the Council decide to place the initiative before the voters, the Council should decide whether it wants to participate in the ballot arguments, or allow an individual or an organization to be the author of the primary and/or rebuttal arguments. The following may assist the Council in making these decisions:

1. Decide whether to author a primary argument against the initiative as a whole Council, or allow an organization or individual to author the primary argument.
2. If the Council decides to author the primary argument, decide whether to delegate the task of writing the argument to a member or members of the Council.
3. Decide whether to author a rebuttal argument as a whole Council, or allow an individual or organization to author the rebuttal argument.
4. If the Council decides to author the rebuttal argument, decide whether to delegate the task of writing the argument to a member or members of the Council.

City Attorney's Impartial Analysis

Finally, Elections Code section 9280 provides that whenever a city measure is placed on the ballot, the City Council may direct the Elections Official to transmit a copy of the measure to the City Attorney. The City Attorney shall then prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis may not exceed 500 words in length and is then printed preceding the arguments for and against the measure. Staff recommends that, should the Northern Plain Initiative be placed before the voters, that the Council direct the City Attorney to prepare an impartial analysis as set forth in Elections Code Section 9280.

ENCLOSURES:

- Initiative to Change the Open Space and Restricted Industrial General Plan Designations for a Portion of Fremont's Northern Plain Planning Area to Agriculture.
- City Attorney's Title and Summary

RECOMMENDATIONS:

1. Consider the report on the effect of the proposed initiative as allowed under Elections Code Section 9212.
2. Following review of the report, either:
 - a. Adopt a resolution ordering the submission of the initiative ordinance to the voters for the November 7, 2006 General Municipal Consolidated Election for the City of Fremont;
 - OR**
 - b. Adopt the initiative ordinance.

3. If the initiative is submitted to the voters, determine whether the Council, or a member or members of the Council, will participate in primary and/or rebuttal arguments.
4. If the initiative is submitted to the voters, adopt a resolution directing the City Attorney to prepare an impartial analysis of the measure as set forth in Elections Code Section 9280.